



CORPORATE CRIMINAL LIABILITY: WHITE COLLAR CRIME

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Abstract

Only humans can act on behalf of a company, and anyone who does so is solely responsible for any crimes they conduct. The importance of incorporation is that it holds people and businesses accountable in particular situations. As per Section 11 of the Indian Penal Code, 1860, a person is defined as "Any Company, Association, or a collection of Persons, whether incorporated or not," according to the statute. According to this Code, everyone is liable for penalty. As a result, everyone is penalized by Section 2 of the Code, which obviously includes businesses. Thus, reading these two clauses can give rise to the idea of corporate criminal liability, but they are not the only pieces of legislation that deal with punishing corporate entities (Companies Act, 2013, Income Tax Act, etc.). Due to their expansion, businesses have grown to play a crucial role in our economy and have become an essential element of our society. Therefore, these businesses should be opposed since they put our society at risk of being used by them. This article will look at many sorts of corporate criminal responsibility and the philosophy surrounding it as a white collar crime.

Keywords- Corporation, Corporate criminal liability, Companies Act 2013, White collar crime

Introduction

There are many ways to explain why punishment of a kind should be imposed on offenders, but dissuasion is the justified way out that applies to moneymaking institutions such as businesses. A Company can be held answerable and be punished on the grounds such as having their own identity, bearing a separate legal personality, and are distinct from its members. Criminal Liability basically illustrates the state of having a legal obligation to another person or to society, as demonstrated by the imposition of criminal penalties. A corporation can be made

criminally liable for both its own actions and the actions of the people it takes on, criminal liability therefore refers to the scope to which a corporation can be made liable collectively for the above two parts.

Because of this, the term "Corporate Criminal Liability" extends to making a company, as a legal person, been criminally liable for both its own actions and those of its employees. This essay tries to examine a variety of corporate criminal responsibility issues before offering suggestions that ought to be included in legislation.

Corporate Criminal Liability under the Twin Model

A. Derivative Model

This model is centralized on individualistic approach. Such type of model is incorporated when an individual connected to the corporation incurs some liability which attracts punishment, but as the individual is linked to the corporation, the liability gets placed on the corporation as a result of having that individual with it and allowing it to incur such liability.

Following are the two types of Derivative Model: a) Identification Doctrine; b) Vicarious Liability

1. Vicarious Liability

The idea of vicarious liability holds its basis on Latin maxims: *Qui facit per alium facit per se*, which means that whoever acts on others behalf is deemed to have acted on his own, and, *respondeat superior*, which means let the master respond. In **Bartonshill Coal Co. v. McGuire**, Lord Chelmsford LC observed that an act done by an employee in the course of his employment would be treated as work done under his employer's direction and infact it would be considered as employer's own act.

In **Commonwealth V. Beneficial Finance CO.**¹, a Massachusetts court observed three firms to be criminally liable for a conspiracy related to bribery. The Vice-President, the Director and the employee of a wholly owned subsidiary were made accountable. Since a company is a legal fiction constituting individuals, the Court felt the need of Corporate Criminal Culpability. The idea of vicarious liability in criminal trials was originally accepted by courts other than those in the US, but this concept was later uninhibited because it was found to be unfair to make one person accountable for the deeds of another.²

2. Identification Doctrine

This English Law theory basically focuses on identifying the specific essential people of the corporation who work on behalf of the corporation and whose acts, behavior and state of mind can be ascribed to the corporation.

¹ Scoff Massachusetts, 1971 360 Mass 188,cfWR Lafare, Modem Criminal Law (West Publishing

² *State of Maharashtra vs. M/s Syndicate Transport Co. (P) Ltd.* AIR 1964 Bom 195.

In Salomon v. Salomon & Co.³ court held that a corporate body holds distinct identity from those who act on its behalf. Also in case of DPP v. Kent & Sussex Contractors Ltd.,⁴ R v. ICR Haulage Ltd.,⁵, the English courts established that Corporate Organizations and companies could be held criminally accountable for crimes requiring criminal intention. The establishment of ‘ Identification Doctrine’ is basically the result of such judicial decisions.

Moore v. Brisler⁶ established that the principal employees of the company acting on its behalf must act within their limits and the authority of power that is been confined to them. In case of absence of specifications in terms of authority, the acts must be done within the designated operational region and power must be used sparingly. It can therefore be inferred that the Identity Theory has a smaller outstretch than the concept of Vicarious Liability; the key feature of Identification Doctrine is that instead of holding a business accountable for the actions of any employee, it imposes culpability to specific individuals.⁷

B. Organizational Model

Unlike the Derivative model, the organizational model pivots on the corporation instead of focusing on the individual. In order to constitute a crime, there should be presence of both the elements namely, the mental state (*mens rea*) and a physical act (*actus reus*), but the most prominent question while holding companies criminally accountable is how a corporation which is a juristic person possess the required mental state to commit a crime.

One method by which mental culpability can be attributed was to use above stated Derivative Model. Another recourse available is to exhibit that such an organizational environment persisted in the corporation which directed, sanctioned, encouraged, and even allured disregard and infringement of certain laws that rendered the actions illegal.⁸ Furthermore, the physical commission of act required to constitute a crime can be derived and proven from the actions of its workers, officers, directors, and others. As a result, a corporation's culture plays a very substantial role and must be strictly considered while establishing its criminal culpability.

Corporate culture may facilitate in the commission of a crimes requiring mental culpability by: firstly, providing such suitable environment or necessary incitement enabling the offender working for the corporation to believe that it was perfectly alright to commit that offence, or the corporation psychologically supports the commission of the offence; secondly, there is a possibility that the corporation constructed such an environment that led to the

³ *Salomon v. Salomon & Co.*, 1897 AC 22: (1895-99) All ER Rep 9 (HL).

⁴ *DPP v. Kent & Sussex Contractors Ltd.*, (1944) 1 All E.R.119.

⁵ *Ibid.*

⁶ *Moore v. Brisler*, [1944] 2 All ER 515.

⁷ Smith and Hogan, *Criminal Law* 178 (1992).

⁸ Criminal Law Officers Comm. [Code Committee] of the Standing Comm. of Attorneys-General, Austl., Model Criminal Code: Chapter 2, General Principles of Criminal Responsibility Section 501 (1992).

commission of the crime. In both cases, the crime got perpetrated because of the corporation and its working culture.

Deadlocks of Corporate Criminal Liability

A. IMPRISONMENT

A company is recognized as a legal entity, as was already said, and as such is liable for the fines imposed by the various acts. There are various provisions in the Companies Act of 2013 that make a corporation liable for any violations. But several provisions, including Sections 447 of the 2013 Companies Act, Section 420 of the IPC, and Section 276B of the Income Tax Act, mandate jail for everyone, even the businesses.

The courts have hit a dead end when a company is charged with violating laws that call for necessary detention because the firm, as a legal entity, cannot be jailed for its criminal conduct; it can only be fined and not imprisoned. In the case of **M.V. Javali vs. Mahajan Borewell & Co. and Others**⁹, the firm was held guilty under Section 276B read with 278B of the Income Tax Act, which mandates imprisonment for minimum three months, but the Supreme Court was unenlightened as to the question of imprisoning a corporation. "The mandatory minimum sentence of imprisonment and fine is to be imposed where it can be impounded, even though a corporation can be tried and punished for a crime committed under Section 276B due to the aforementioned provisions of Section 278B. However, since a corporation is a juristic person, the mandatory minimum sentence of imprisonment and fine cannot be imposed," J. Mukherjee said.

As per the conclusion derived, the current quick fix to the problem is that if an offender is a juristic person, courts would have no power to impose sentence of imprisonment; instead, it will be subjected to penalty. Since the courts have their hands tied to give imprisonment as punishment, the courts still in exercise of their discretion and as per the severity of the case, is well equipped to impose higher fine in contrast to a person who is capable of being imprisoned for the same offence.

B. MENS REA

Another issue which arose before the Judges was how to determine the mental state (Mens rea) of a corporation for the allegations of the offense which requires mental element to be proved in order to decide the liability. The established rule was that the firm was only tried in circumstances where mens rea was not necessary, and it was acknowledged that it could not be tried for crimes requiring mens rea. But with time the issue pertaining to ascertainment of mens rea of a juristic person starts to hold weightage.

⁹ *M.V. Javali vs. Mahajan Borewell & Co. and Others*, (1997) 8 SCC 72.

The Bombay High Court rejected a proceeding against a corporation for alleged cheating in **Motorola Inc. vs. Union of India**¹⁰, observing that a crucial component of the offence, the mens rea, could not be formed by a business. As a result, section 420 of the IPC could not be used to bring charges against the corporation, but the idea of a firm lacking mens rea was no longer applicable. "A firm may in many ways be akin to a human body," Lord Denning said in the case of **H.R. Bolton (engg.) Co. Ltd. vs. T.J. Graham**¹¹. He said that every corporation has a brain and a nerve center that regulates its actions. They also have hands that grip the tools and act in response to commands from the center. A company is primarily constituted of two parts, firstly some of the company's employees such as servants and agents who serves to accomplish the assigned tasks and are not behind the general mind or will of the company. Second are the directors and managers, who represent and govern the company's controlling mind and will. The state of mind of the corporation is that of these executives, and it is treated as such by the law. As a result, instances where the law demands personal fault as a condition towards tort responsibility, the Director's guilt will constitute the company's personal fault.

In order to deal with the situation, India developed the notion of alter ego. The alter ego thesis' core idea is that the legal system can be personified. The Corporation is regarded as the individual's alter ego. As a result, the corporation may be held accountable for a criminal act committed by an employee during his tenure. Individual mens rea is considered as the mens rea of the corporation as a whole. The Supreme Court held in **The Assistant Commissioner, Assessment-II, Bangalore & Ors. Vs. M/s. Velliappa Textiles Ltd. & Anr**¹² that, though earlier the corporations were not entitled to any criminal liability for the offences requiring mens rea, but with the evolvement of the judicial thinking, the person in charge of the corporation's affairs, the alter ego, would be liable for any offence.

As a result of the Doctrine of Alter Ego, the courts were able to frame corporate houses for crimes requiring mens rea, making it easier for the courts to hold corporations criminally accountable.

The 47th Law Commission study also proposed a number of measures to address the present issue. According to Paragraph 8(3) of the 47th Law Commission Report:

Judges will be given some leeway to apply punishments as they see suitable in each case. "The court must have the option to sentence an offender to a fine solely in any circumstance where the offence is punished by either imprisonment alone or by imprisonment and fine and the offender is a corporation," When an offence is punishable with imprisonment or any punishment other than a fine, and the corporation is the offender, the court has the authority to sentence the offender to fine.

¹⁰ *Motorola Inc. vs. Union of India*, 2004 Cri LJ 1576.

¹¹ *H.R. Bolton (engg.) Co. Ltd. vs. T.J. Graham*, [1957] 1 QB 159.

¹² *The Assistant Commissioner, Assessment-II, Bangalore & Ors. vs. M/s. Velliappa Textiles Ltd. & Anr*, (2003)11 SCC 405

Unfortunately, legislators did not act upon the Law Commission's Recommendations and failed to inculcate these provisions, unaffected. The court still faces a hard time while punishing the offenders of white collar crimes. Because of this, even if corporate crimes are so prevalent nowadays, there aren't many effective ways to stop them.

Legal Position in India

The Indian Penal Code penalizes the acts for which a corporate organization may also be found guilty, and the punishment imposed is a mandatory imprisonment. It was decided in the case of **Standard Chartered Bank vs. Directorate of Enforcement, (AIR 2005 SC 2622)**, that the firm is liable to be prosecuted and penalised for criminal offences. The Supreme Court dismissed the proposition that the firm could steer clear of criminal prosecution if a prison sentence was indispensable. Because the company cannot be made liable to imprisonment, the court lacks power to impose such punishment; but, if both imprisonment and a fine are prescribed as punishments, the court can impose fine against the firm. The issue in **Aneeta Hada vs. Godfather Travels & Tours Pvt. Ltd, [2012 5 (SCC 661)]**, pertained to determining the corporate liability for cheque dishonour. The Supreme Court debated on the scope of vicarious liability in corporate cases. As a legal entity, the corporation is responsible for the actions of its people. In the other case, **Iridium India Telecom Ltd vs. Motorola Inc.,[(2011) 1 SCC 74]**, The Supreme Court ruled that corporations and corporate houses can no longer promise immunity from prosecution on the justification that they lack mens rea in all nations that uphold the rule of law.

Conclusion

The concept of corporate criminal responsibility is well-established in the criminal law field. A business can break the law and face criminal charges. However, Indian law does not adapt to these developments, and businesses are not held accountable by the law. Even if they do, there are no consequences other than a fee under the statutes and court rulings. Even the Supreme Court has acknowledged that a separate law is required to establish corporate criminal culpability.